

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18361. 5. Administrative Hearings.**

(a) Administrative Hearing Brief. Not later than one week prior to a contested administrative hearing that is to be heard by the Commission itself, the Executive Director shall and any respondent may submit to the Commission a written brief describing the evidence to be presented at the hearing and outlining significant legal arguments expected to be raised. Prior to the contested hearing, when a brief is submitted by any party pursuant to this section, a copy shall be provided to all other parties to the administrative action.

(b) Preliminary Matters and Hearing on Merits. If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available.

When the Commission decides to participate in a hearing on the merits, the Chairman of the Commission may decide that any or all motions as to procedural matters, validity or interpretation of the Political Reform Act, disqualification of any member of the Commission, or any other matters not related to the truth or falsity of the factual allegations in the accusation shall be heard by an administrative law judge alone prior to the hearing on the merits. Any such motions or matters shall be noticed in a timely fashion. Any person requesting reconsideration by the Commission of any decision of the administrative law judge shall submit, at least 14 days

prior to the hearing on the merits, a written request for reconsideration setting forth the reasons for the request and including any appropriate points and authorities or affidavits.

(c) Standard of Proof. When an administrative hearing is conducted under Government Code section 83116, findings shall be made on a preponderance of the evidence and it shall require the concurrence of at least three members of the Commission to find a violation or impose any order.

(d) Factors to be Considered by the Commission. In framing a proposed order following a finding of a violation pursuant to Government Code section 83116, the Commission and the administrative law judge shall consider all the surrounding circumstances including but not limited to:

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

(e) Stipulated Orders. At any time before or during an administrative hearing and in lieu of such a hearing, the Executive Director and the person who is the subject of the investigation may stipulate to the entry of an order. The order must be approved by the Commission, which

may consider the matter in executive session. The stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under Government Code section 83116. The stipulated order shall be released publicly and shall have the force of an order of the Commission.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116. Government Code.

#### HISTORY

1. New section filed 3-15-94; operative 3-15-94 (Register 94, No. 11).
2. Renumbering of former section 18361.5 to section 18361.9 and new section 18361.5 filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).